S.B. CIVIL WRIT PETITION NO.1557/2004
(Rajendra Kumar vs. State of Rajasthan & Ors.)

Date :: 02.04.2007

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr.D.D. Thanvi, for the petitioner.
Mr.S.N. Tiwari, Dy. Govt. Advocate.

Heard learned counsel for the petitioner.

By way of filing present writ petition, the petitioner is challenging the order passed by Additional District Judge, Nathdwara in Civil Misc. Appeal No.32/2001 whereby he has set aside the order passed by learned Civil Judge (Junior Division), Nathdwara in Civil Misc. Case No.47/1999 whereby interim order was passed in favour of the petitioner.

It is contended by learned counsel for the petitioner that suit is pending since 1999 and from that date stay is operating against the respondents, therefore, in the interest of justice a direction may be given to the trial court to decide the suit itself expeditiously preferably within six months.

Learned Dy. Govt. Advocate vehemently opposed the prayer and stated that the appellate court has rightly quashed the order passed by the trial court with regard to granting temporary injunction in favour of the petitioner.

I have perused the impugned order as well as record of the case.

In view of the fact that earlier petitioner preferred a revision petition before this Court and the same was registered as S.B. Civil Revision Petition No.111/2003, in which this Hon'ble Court was pleased to grant stay in favour of the petitioner. Latter on the said revision petition was dismissed in view of the judgment given by the Apex Court in Surya Dev Rai vs. Ram Chanda Rai & Ors., reported in 2003 (6) SCC 675, in which it has been held that revision petition is not maintainable, but a liberty was given to the petitioner to avail any remedy which is available under the law. While dismissing the revision petition vide order dated 13th October, 2003 it was observed by learned Single Judge of this Court that:

> "The Interim order, if any, obviously stands vacated, and the learned trial Court is directed to expeditiously proceed with the rial of the main suit and decide the suit most expeditiously."

It is contended by learned counsel for the petitioner that though the stay order was vacated in revision petition but petitioner availed the remedy by way of filing this present writ petition under Article 226 and 227 of the Constitution of India.

The present writ petition was listed before this Court on 04th October, 2004 and on that date it was ordered that :

> "Meanwhile, Mr.Upadhyay submits that they will not proceed with the recovery or auction of the property."

This order is in existence till today.

It is obvious from the facts narrated above that suit is still pending since 1999 before the trial court, therefore, while passing an order for maintaining status quo as exists today, the trial court is directed to decide the suit itself expeditiously within a period of six months. Ordered accordingly.

The petitioner is disposed of.

[GOPAL KRISHAN VYAS],J.

A.K. Chouhan/-